

January 15, 2007

CORRECTIONS BUDGET

Chairman Hawk and Members of the Joint Appropriations Sub Committee on  
Corrections and Public Safety:

My name is Scott Crichton. This is the 10<sup>th</sup> session for me serving as the Executive  
Director of the American Civil Liberties Union of Montana (ACLU).

You all are to be commended for the duty you perform on this committee to scrutinize  
corrections expenditures. Senators Schmidt and Gallus are to be commended as well  
for their efforts since the last session as active participants on the Governor's Advisory  
taskforce on Corrections. See attached Council membership and recommendations

I speak on behalf of the 2,400 Montana households, dues paying ACLU members,  
dedicated to defending the Bill of Rights and the Constitution. We take the phrase  
"with liberty and justice for all" to heart. To the ACLU, liberty matters. Our position  
on incarceration is that the state should use the least restrictive environment available  
while protecting public safety when meeting out punishments for violations of the  
law.

Briefly, our policy regarding the Constitutional Rights of Prisoners follows:

(a) Prisoners, whether convicted or waiting for trial, remain protected by the  
Constitution and while incarcerated should suffer only restrictions of those  
constitutional rights which are necessary concomitants of incarceration.

When the state incarcerates an individual, it takes responsibility for that person's fair,  
safe, and humane treatment pursuant to the Fifth and Fourteenth Amendments.  
Moreover, the Eighth and Fourteenth Amendments forbid the state from imposing  
cruel and unusual punishment upon an incarcerated individual. All confined persons  
are entitled to safe, sanitary, and humane conditions of confinement. These include  
adequate living space, food, recreation, medical and mental health care, and  
protection from physical mistreatment by guards or other inmates. In addition, there  
should be adequate opportunities for self-improvement.

\* \* \*

(b) Among the specific rights to which prisoners are entitled are the following:

- 1) The right to counsel and other legal assistance.
- 2) The right to be free from unnecessary censorship of written material.
- 3) The right to express and practice political, personal and religious beliefs.
- 4) The right of personal privacy.
- 5) The right to vote.
- 6) The right to procedural due process.
- 7) The right to be free from unreasonable searches and seizures.

We take defending the rights of prisoners quite seriously, as demonstrated in two cases **LANGFORD, et al. v. MONTANA and MANY HORSES v. RACICOT**, filed around conditions at Montana State Prison in Deer Lodge and the former Women's Correctional Center on the campus of Montana State Hospital.

Solutions are not easy to find. But as former Governor Stan Stephens came to understand at the end of his tenure as Governor, we cannot build our way out of the prison crisis. He advised that we fill whatever we build. Despite his admonition, since his departure from office, the DOC has been engaged in crisis management of one form or another.

Montana tried exporting inmates to other states. Governor Racicot was at the helm when we contracted beds with the Bobby Ross Group to house Montana inmates in Spur, Texas. The facility in Spur was a failed for-profit jail taken over by a group seeking to make money handling prisoners from Montana, Colorado and Hawaii. It was a fiasco that ended with it being the first such facility stopped from operating by the Federal Bureau of Prisons.

Then Montana constructed three regional prisons in partnership with Dawson, Cascade and Missoula counties; and opened the door for private for profit prisons in

Montana with the CCA facility in Shelby. Originally occupancy was strictly limited to non-violent inmate offenders from Montana. Every session since has seen overtures to expand the number of beds and expand the populations served in the name of economic development. Regardless, staff turnover there approaches 50%.

In May 2006, according to the US Bureau of Justice Statistics report on Prison & Jail Inmates at Midyear 2005, Montana led the nation with the largest percentage increase in a state prison population: up 7.9 percent from 6/30/04 to 6/30/05. Montana almost tripled the Federal rate (2.9%) which was more than twice the overall state rate (1.2%).

I remind you of some of the findings in the survey results presented to you last week by the sociology professors from the University of Montana exploring recidivism:

- ✓ Mental Illness exists in over 45% of the pre-release center populations. (69% of females, 41% of males have mental health diagnosis.)
- ✓ 94% of all offenders with a mental illness have a chemical dependency diagnosis, commonly referred to as a co-existing disorder.
- ✓ 93% of all residents are found to have a condition of substance abuse or chemical dependency disorder.
- ✓ 70% of the populations hold a high school equivalency in education. (69% of men, white and Native American; white females 87%, Native American females 46%).

I urge you to keep their recommendations in mind as you weigh policy decisions that may also come before you—both in your deliberations in this committee and in your deliberations on the floor in your respective chambers. Mike Ferriter, the DOC, and the State of Montana are to be congratulated for the significant growth of real alternatives to incarceration. Every year it seems that more people and a higher percentage of inmates are being handled through community based corrections.

In addition, the State of Montana, and the 59<sup>th</sup> legislature in particular, are to be acknowledged for taking one momentous step towards building a more-just Montana with passage of SB 146 creating for the first time a statewide public defender system.

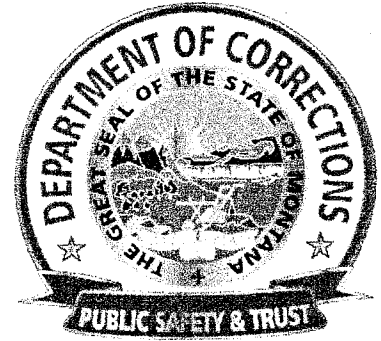
While that system is now in its infancy, it is for the first time providing an accounting for the services delivered statewide in the legal defense of the indigent. I must say, full funding for that system is imperative, as it is the best tool we have for reducing the inflow into corrections facilities and providing some pressure relief impact for long term conditions and overcrowding issues.

On the federal level, recall these words from President George W. Bush's 2004 State of the Union Address; "In the past, we have worked together to bring mentors to the children of prisoners, and provide treatment for the addicted, and help for the homeless. Tonight I ask you to consider another group of Americans in need of help. This year, some 600,000 inmates will be released from prison back into society. We know from long experience that if they can't find work, or a home, or help, they are much more likely to commit more crimes and return to prison. So tonight, I propose a four-year, 300 million dollar Prisoner Re-Entry Initiative to expand job training and placement services, to provide transitional housing, and to help newly released prisoners get mentoring, including from faith-based groups. America is the land of the second chance - and when the gates of the prison open, the path ahead should lead to a better life."

To close, I remind you that the people in DOC have done their very best to outline plans and proposals for you to support. ~~And without micro-analyzing this budget or their program proposals, I would strongly urge you to affirm this budget.~~ But I would also urge you to take a step back and look at the big picture.

Except when talking about the small percentage of violent offenders in the system, it is clear that prisons are a very expensive alternative to community based mental health treatment. Chemical dependency, on its own or as a co-existing disorder with mental health, can be much more effectively treated in a non-incarcerated environment in the community. If we can come to understand that treating mental health and chemical dependency primarily as health issues rather primarily as criminal issues, we can take significant pressure off the demand for hard beds in secure facilities, and begin to portion those beds out accordingly to people who are violent, predatory, and threats to public safety.

# Corrections Advisory Council



## Recommendations of the Department of Corrections Advisory Council *Nov. 30, 2006*

### Background

At the Nov. 16, 2005, meeting of the Corrections Advisory Council, Chairman and Lt. Gov. John Bohlinger appointed a six-member subcommittee to study prison overcrowding and make recommendations about how to take the pressure off of the system. The subcommittee focused on increasing community corrections programs and services as a means of diverting offenders from prison, paying particular attention to special-needs populations such as drug offenders, sex offenders and the mentally ill. We looked at the needs of offenders before, during and after their incarceration, in order to improve the continuum of care and treatment, in hopes of reducing the recidivism rate. We also were aware that the native American population is over-represented in the system, and that the women's population is rising more quickly than the male population. Native Americans have a tougher time navigating the system than white inmates, and both the native American and women populations are on the rise due to drug offenses. Taking all of these factors into consideration, the committee makes the following recommendations, which are aimed at improving the system and the offenders' chances of success in the community.

The members are Rep. Gail Gutsche, Missoula, chairwoman; Sen. Jim Shockley, Victor; Reps. Tim Callahan, Great Falls, and Veronica Small-Eastman, Lodge Grass; Cascade County Sheriff Dave Castle; and Toole County Commissioner Allan Underdal.

The subcommittee met seven times: Jan. 5, Jan. 31, Feb. 27, March 31, May 8, June 19 and Aug. 1. The full council conducted its initial discussions of the proposed recommendations at its Sept. 8 meeting in Boulder, deciding to conclude the discussion and take final action at its Nov. 30 meeting.

### Recommendations

The following summarize the Corrections Advisory Council's recommendations adopted at its meeting on Nov. 30, 2006. All but one passed unanimously. The vote on No. 2 was 11-1.

1. Expand community-based programs and services for offenders by:
  - a) Creating a pilot project that offers financial incentives for local governments or service providers to increase community-based programs for offenders. The money would be paid to governments based on an established formula, such as the year-over-year reduction in the number of offenders committed to prison from a particular judicial district. The program would need an initial appropriation, although future funding could come from the money saved by the Department of Corrections due to reduced inmate admissions.
  - b) Modifying and expanding, particularly in rural areas, the existing system in which district judges operate drug courts and mental health courts to create dual-purpose "treatment courts" capable of handling those with both drug addiction problems and emotional/mental disorders; and as an incentive, providing DOC probation and parole officers when needed. This would address the fact that many offenders experience both afflictions and many of those with mental health problems are reluctant to submit themselves to a "mental health court" because of the stigma.
  - c) Developing criteria for developing adult "guide homes." This would be similar to a program already in place for juvenile offenders. These are private homes where residents are willing to take in an adult offender and offer him or her positive role models and mentoring that will put them on the right track.
2. Provide a stipend for a lengthy enough period of time (suggested at least three months) after an offender is released from prison to help them restart their lives. The current release stipend of \$100 is clearly not enough for a homeless, jobless offender to get restarted. This money, which would be administered by the offender's parole officer, would be used to help a person with critical expenses such as those related to housing, job-hunting and necessities of life. The DOC would pay bills, such as rent and restitution, directly to the vendors.
3. Changed the title of the "Sexual and Violent Offender Registry" to the "Sexual and/or Violent Offender Registry" to reflect that not all violent offenders listed there also are sexual offenders.
4. Help inmates adapt to release into communities by:
  - a) Employing case managers in prisons to help inmates better prepare for release by identifying community and mental health services that will ensure a continuum of care for offenders.
  - b) Adding specialized case managers to probation and parole offices to help offenders navigate wrap-around community services needed for their ongoing recovery. Currently, this service is being performed by parole officers who are already overwhelmed with huge workloads and may not be familiar with all of the available and necessary services.

5. Provide additional assistance to sex offenders by:

- Increasing sex offender and chemical dependency treatment capacity in prisons so that inmates do not have to wait long periods for mandatory treatment before they can qualify for parole eligibility.
- Asking the Workforce Development Task Force to put greater emphasis on filling the need for more sex offender therapists and other professionals capable of providing increased community treatment opportunities to offenders.
- Doing more to connect sex offenders with individual and group therapy opportunities upon release from prison. Recognizing that sex offenders need lifelong support and therapy, this will ensure they are connected to community therapy opportunities upon release from prison, and utilizing existing private providers where possible.
- Using case managers who specialize in working with sex offenders or the mentally ill offenders.
- Analyzing the potential for persuading more prerelease centers to accept sex offenders.
- Investigating the possibility of the state indemnifying sex offender therapists.

6. Ask the Department of Corrections and the state Board of Crime Control to collaborate on development of a comprehensive database of available offender services and their locations.

7. Conduct a study, lasting no more than two years, on non-prison alternatives to for treating non-violent offenders convicted a first or second time of simple drug possession. The study should be conducted by the Corrections Advisory Council and/or the appropriate legislative interim committee.



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